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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND
PROTECTION OF MINORITIES

Forty-fourth session

# SUMMARY RECORD OF THE 20th MEETING

held at the Palais des Nations, Geneva,
on Tuesday, 18 August 1992, at 10 a.m.

Chairman: Mr. ALFONSO MARTINEZ
later: Mrs. KSENTINI

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The meeting was called to order at 10.20 a.m.

ORGANIZATION OF WORK (continued)

1. Mr. WALKER (Vice-Chairman of the Commission on Human Rights), introducing the report on the forty-eighth session of the Commission on Human Rights on behalf of its Chairman, Mr. Solt, said that the events that had taken place in the world in recent years had highlighted the importance of human rights and the need to ensure that they were better respected. Since the Commission on Human Rights and the Sub-Commission on Prevention of Discrimination and Protection of Minorities were the two United Nations bodies most active in that field, relations between them were of crucial importance. The dialogue in which they had been engaged for one year for the purpose of strengthening their cooperation and complementarity was therefore to be welcomed. Every year the Commission considered the recommendations and proposals submitted to it by the Sub-Commission, which it generally approved or even took up as its own; that was an accurate indication of the complementarity between their activities. However, for some years past the Commission had been increasingly concerned about the number of proposals made, the dangers of overlap between the two bodies, and the general need to harmonize their work. It had therefore put forward suggestions for rationalizing and simplifying the work of the Sub-Commission. In its resolution 1991/56, it had first of all stressed that impartiality and objectivity, as well as the independence of its members and their alternates - which was the guarantee of such impartiality and objectivity - should continue to be its guiding principles. That had led the Commission to reaffirm that Governments should nominate as members and alternates of the Sub-Commission only persons having real experience in the human rights field.

2. Secondly, the Commission had considered that the preparation of studies,reports and draft international instruments was still one of the most important aspects of the Sub-Commission's technical work and of its contribution to the Commission's own work and that, in so far as the Sub-Commission consisted of independent experts who analysed new developments in the field of human rights, its role should be enhanced. The Commission had therefore invited the Sub-Commission to submit to it new proposals that would facilitate its deliberations on human rights issues. The Commission had also expressed its conviction that the Sub-Commission could improve its work, particularly on subjects to which it itself gave priority, if it restricted the number of studies being made at the same time and did not propose any new study until the studies previously authorized had been completed. Finally, the Commission had considered it important that the Sub-Commission should advise it on ways of achieving complementarity between their respective activities. It had also made some suggestions concerning the organization of the Sub-Commission's work. Noting that every year the Sub-Commission had adopted and submitted to it an increasing number of decisions and resolutions - a practice which had not facilitated the Commission's work - it had requested the Sub-Commission to reconsider its procedure in that respect and in particular to be more selective with regard to the topics it studied. The Commission had urged the Sub-Commission to concentrate its attention on problems specifically affecting those human rights in respect of which it was in a position to make an original contribution as a body of experts. It had therefore requested the Commission to consider how to avoid the proliferation

of studies and draft resolutions or decisions on issues already being dealt with by the Commission.

3. By its resolution 1992/66, the Commission had taken note, at its forty-eighth session, of the measures already adopted by the Sub-Commission to rationalize and simplify its work and had encouraged it to continue the debate on the best ways of increasing its efficiency. In particular, it had welcomed the Sub-Commission's proposal to establish an inter-sessional working group to study the question so that it could submit specific proposals at the Sub-Commission's current session. Needless to say, the Commission would give constructive consideration to all the suggestions made by the Sub-Commission at the end of that debate, in an endeavour to improve its methods of work. In view of the increasing number and complexity of the human rights problems faced by the Commission and the Sub-Commission, it was in the interest of both bodies to move towards a better articulation of their respective activities. The Commission itself must be selective in its work aimed at the universal realization of human rights.

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING POLICIES OF RACIAL DISCRIMINATION AND SEGREGATION AND OF APARTHEID, IN ALL COUNTRIES, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES: REPORT OF THE SUB-COMMISSION UNDER COMMISSION ON HUMAN RIGHTS RESOLUTION 8 (XXIII) (agenda item 6) (continued) (E/CN.4/Sub.2/1992/13, 14, 39, 40, 41, 45, 47 and 51; E/CN.4/1993/3-E/CN.4/Sub.2/1992/42; E/CN.4/1993/5-E/CN.4/Sub.2/1992/43; E/CN.4/1993/6-E/CN.4/Sub.2/1992/49; E/CN.4/Sub.2/1992/NGO/4, 6, 8, 13, 14 and 19)

4. Mrs. WARZAZI, speaking on a point of order, asked who had distributed a document entitled "Tamil information" which was on the table at the back of the room, since it was completely unacceptable that the Sub-Commission should serve to promote the activities of terrorist groups which were a long way from defending human rights. She sincerely hoped that it was not a non-governmental organization which had done so and requested the secretariat to take measures to ensure that such an event did not occur again.

5. Mr. CISSE (Centre for Human Rights) stated that no document should be placed on the table at the back of the room without the consent of the secretariat, which would in future make sure that the rule was scrupulously respected.

6. The CHAIRMAN invited the observers of Governments which had requested to do so to make statements equivalent to the right of reply.

7. Mr. SEZGIN (Observer for Turkey) informed the Sub-Commission that a draft law on juvenile justice had been placed before the Turkish Parliament on 8 April 1992. Under the draft, which had been drawn up in the light of the provisions of the Convention on the Rights of the Child, to which Turkey was a party, the jurisdiction of juvenile courts was extended to cover all offences committed by minors up to the age of 18. Children under 15 were exempted from any proceedings for offences punishable by imprisonment for less than three years. In the case of prolonged judicial proceedings, the public prosecutor was empowered to defer application of the sentence imposed. It was forbidden to handcuff a minor found guilty of an offence even during his transfer for

judicial or administrative reasons. No juvenile delinquent could be placed in a prison to serve his sentence. Hostels and reformatories operated by the Ministry of Social Services (and no longer by the Ministry of Justice) were used for that purpose. The penalty imposed on a juvenile delinquent was determined on the basis of his or her physical, mental, moral and social development. In short, the new legislation was based on the principle of rehabilitation and not on that of punishment.

8. Young generations were undeniably passing through a period of crisis throughout the world. The increase in the suicide rate among children and in the rate of detention in psychiatric hospitals, as well as the spread of drug addiction in many developed countries, were more often than not explained by the breakdown of family structures and the destruction of certain values. In the developing countries, children and young people were facing other problems mainly due to the difficulties caused by diverse changes and, in particular, by the exodus from the countryside. Those problems could not be solved by accusing the countries concerned of violating human rights. Nevertheless, it was mainly countries in which the breakdown of Family structures and the destruction of values had gone furthest which were most vocal in berating certain developing countries through their most cherished values namely, their children.

9. With regard to the allegations made concerning Turkish citizens of Kurdish origin, a distinction had to be made between Kurdish reality and terrorism using the Kurdish name. Most Turkish citizens of Kurdish origin lived in the western regions of Turkey. Furthermore, Kurdish leaders, citizens of other countries, had outspokenly affirmed that in a democratic country such as Turkey the reasons behind their struggle did not exist. Experience had shown that when, for one reason or another, people wanted to berate a country, they accused it of every evil and all means were admissible to combat it, including terrorism. Those who allowed themselves to be carried away in that whirlwind forgot that the terrorists whose words they echoed had murdered hundreds of children. They took no account of the start up of the largest development project in the world - the Southern Anatolian project - designed to raise the standard of living of an entire population, and they also denied the democratic progress that had been achieved. In fact, they were trying to avenge by rhetoric the obvious setback suffered by the terrorists among a population which had confirmed its preference for democracy, not only in Turkish general and local elections but also by opposing the attempts of the terrorists to disrupt the traditional Newroz holiday.

10. Mr. URREUELA PRADO (Observer for Guatemala) expressed astonishment that the representative of the American Association of Jurists, in the statement he had made the previous day, had called into question Commission on Human Rights resolution 1992/78, which was based on Mr. Tomuschat's report on the human rights situation in Guatemala (E/CN.4/1992/5). The incident mentioned by Mr. Teitelbaum had resulted from a misunderstanding which had been cleared up and had had no repercussions, as was shown by the agreement concluded between the Government and the National Revolutionary Union of Guatemala (URNG) on voluntary civil defence committees.

11. Furthermore, the resolution that the representative of the American Association of Jurists, claimed to have been adopted by Congress had not reached the plenary. Mr. Teitelbaum seemed to forget that a process of democratization was under way in Guatemala and that the legitimately elected Government of the country was trying, by peaceful means, to put an end to the armed conflict and thus solve as best it could the country's economic and social problems. He deliberately ignored, it seemed, the mechanisms found in any democracy whereby the legislature could question ministers and call for a vote of confidence. Nothing of the sort had taken place. Incidentally, the Minister of Labour, who was also General Secretary of the Democratic Socialist Party, had recently been elected by acclamation Vice-President of the International Labour Conference held at Geneva in June 1992. The very suggestion that the situation in Guatemala should no longer be considered as one requiring assistance from the international community in human rights matters was quite unacceptable.

12. In reply to other allegations made by a political militant whose statement had been, moreover, an exact copy of that made by another non-governmental organization (NGO), he reaffirmed that the campaign against impunity was a fundamental aspect of the policy being pursued by his Government, which had, for that purpose, adopted specific measures concerning the police, the public prosecutor's office and the judiciary in general. Furthermore, his Government had never opposed the establishment of a commission of inquiry on human rights violations and had, unlike URNG, already accepted the proposal made in that connection to the two parties to the talks by the conciliator, Mgr. Quezada Toruno. Moreover, under the agreements concluded with URNG on the demobilization of armed groups, it had declared its resolve no longer to authorize the creation of new voluntary civil defence committees. Finally, his Government would consider it completely ill-advised to establish another supervisory mechanism whose work might duplicate that being done by Mr. Tomuschat, who had indicated in his report that the Guatemalan Government had given him ample assistance in his work.

13. Mr. MILOSEVIC (Observer for Yugoslavia) categorically rejected the false and insulting allegations made against the President and citizens of Yugoslavia by the non-governmental organization called "Bastion of Mothers for Peace", whose representative had expressed herself in terms similar to those used by the worst Croat fascist extremists in their propaganda. Could it really be believed that the democratically elected President of Yugoslavia, who was also a writer and a humanist, could consider his compatriots to be liars, murderers and savages? How could the Sub-Commission fail to be astonished by the hypocrisy of a person who, being supposed to deliver messages of peace, merely issued incitements to hatred and war. Fortunately, in Croatia there were persons who rejected war and sincerely wanted peace. The agreement on the exchange of prisoners of war signed at Budapest on 14 August 1992 by the Prime Ministers of Croatia and Yugoslavia was a hopeful sign in that respect.

14. Mr. MOLLAZADE (Observer for Azerbaijan), commenting on the statement made by the representative of the International Movement for Fraternal Union Among Races and Peoples, said that even during the 70 years of the communist regime the Armenians of Nagorny Karabakh had enjoyed territorial, administrative,

national and cultural autonomy, had spoken their own language, had kept their culture alive, and had even been perfectly integrated in the parallel economy. The massacres that had taken place at Baku in January 1990 were of course most regrettable and had been condemned by the Government currently in power. They had been organized by KGB officers who were thereby trying to impose a state of emergency in Azerbaijan and to eliminate the democratic opposition. On the other hand, no Armenian organization of whatsoever persuasion had condemned the massacres of Azerbaijanis in Armenia.

15. He then gave a broad outline of the very complicated history of the Transcaucasian Republics and cautioned against using that history for the purpose of making territorial claims, since Nagorny Karabakh had always been a dependency of another entity, Karabakh, Russia and then Azerbaijan. The problem of self-determination was extremely complex, especially in the Caucasus region, where State frontiers did not coincide with ethnic frontiers. In that respect it was important to distinguish between the right of "peoples" and the right of "minorities". The Armenians living in Azerbaijan were entitled to political, social, economic, cultural and religious autonomy. They could even be represented in the Azerbaijani Government but they could not for all that threaten the territorial integrity of Azerbaijan. Armenia itself had become independent and had established its rights over the territory of the present Armenia after the fall of the communist empire in 1991. It was at that time that Azerbaijan and Armenia had become members of the United Nations, their recognized frontiers remaining the same as when they had been part of the Soviet Union.

16. The International Movement for Fraternal Union Among Races and Peoples had quoted Mr. Gross Espiell, but the latter had also said that the right to secede of a State Member of the United Nations had not existed as such either in its legal texts or in its practice, since to invoke that right in order to disrupt the national unity and territorial integrity of a State would pervert the principle of self-determination and would be contrary to the purposes of the United Nations Charter.

17. Mr. CHAKRAVARTI (Observer for India) said that the statement made before the Sub-Commission by an NGO on the subject of the State of Jammu and Kashmir, which formed an integral part of India, was nothing more than propaganda in favour of terrorist violence. Any democratic State had the duty to combat terrorism and to protect its citizens against the exactions of those who practised it. To describe terrorist groups as "armed opposition" was to mock the memory of the innocent victims of implacable terror. In their struggle against terrorism, the security forces were under instructions to respect human rights at all times. The allegations of violations made against them often came from terrorist sources, as in the case of the accusations of collective rape which after an inquiry by the independent Press Commission, had been found to be false and absolutely groundless.

18. As for the question of the self-determination of the Indian State of Jammu and Kashmir, it should be borne in mind that the concept of self-determination was not applicable to the integral parts of sovereign States. Several experts of the Sub-Commission had also stressed the serious consequences which the perversion of that subtle concept could have for integrity of sovereign States.

19. The Sardat Sarovar project concerned one of the most arid regions of India. Its implementation would make it possible to supply approximately 30 million persons with drinking water and would provide employment for almost 1 million. All the problems to which the project could give rise had been carefully considered by the Indian Government and by the Governments of the States concerned, and a vast programme for resettling the people living in the region had been prepared. The question of indigenous populations did not arise in that connection, since all Indians were indigenous. What was at stake was the development of a region and promotion of the right to development of its inhabitants. It was therefore regrettable that not only groups which, passing themselves off as representatives of NGOs, pursued personal objectives, but also that experts of the Sub-Commission should give a false picture of the project, seeing in it a violation of human rights whereas its implementation would help to eliminate poverty and to promote economic development. The Indian Government hoped that the Sub-Commission would concentrate its attention on burning current issues such as the violation of the rights, particularly the economic and social rights, of innocent civilians by terrorists and subversive movements which enjoyed the support of certain States and groups, including NGOs, and that it would continue to work for the restoration of national peace and understanding in the regions concerned, in cooperation with the elected representatives of their peoples and their elected Governments.

20. Mr. SRISODAPOL (Observer for Thailand) referred to the question of "planned evictions" raised by the NGO Habitat International Coalition. The situation of low-income persons in Thailand was, of course, not always brilliant, but the Thai Government was trying to improve the lot of those who lived in conservation areas by allocating land to them. For the past five years the Thai economy had been expanding at a very fast rate and, since most activities were concentrated in Bangkok and its surrounding provinces, large numbers of people from the countryside had come to settle there. They had had to seek accommodation in over-population slum areas, but the Government had introduced specific measures to remedy the situation under its economic and social plan for the period 1992-1996. It would try to increase the availability of low-cost housing, to protect the right to adequate housing, to offer new housing through joint investments by the Government, local authorities, land owners and the National Housing Bureau, to subsidize the development of infrastructural facilities and basic public services and to promote the granting of housing loans.

21. In the now impoverished conservation areas the problem essentially had two aspects: the allocation of land and conservation of the environment. As far as the first was concerned, the Thai Government was trying to secure the cooperation of the villagers concerned. It had recently agreed to study, in cooperation with the villagers, with NGOs and with local authorities, certain questions such as land utilization, vocational training programmes and reafforestation. The previous programmes and the programmes scheduled for 1993 had been adjusted to take into account the need for flexible resettlement programmes and the urgency of reafforestation and environmental protection. According to a recent survey, 80 per cent of the beneficiaries of the resettlement programmes were satisfied.

22. Mr. RIMDAP (Observer for Nigeria) said that the allegations made the previous day by the representative of the International Fellowship of Reconciliation were groundless. In Nigeria, Muslims and Christians co-existed in mutual respect and tolerance, and different members of the same family could embrace the faith of their choice. Naturally, underdevelopment posed serious problems for a multi-ethnic and multi-religious country, but the events that had caused the Christians in certain villages in the north to leave must not be regarded as clashes of religious origin. The events were in fact the result of communal and ethnic feuds over farm land. Such crises had also occurred elsewhere - always in connection with farm land - and the Christian communities in difficulties had not fled. The economic problems due to the structural adjustment programme recommended by IMF and the World Bank had only aggravated such communal feuds. When the crises had occurred, the Government had immediately embarked upon an inquiry to determine their cause and had instituted public proceedings against the persons involved; its action had resulted in a decline in inter-ethnic strife. It had also taken measures to relieve the hardships experienced by the population. The spokesman for the International Fellowship of Reconciliation would therefore be well advised not to place blind trust in the account given by the so-called representative of the movement in Nigeria; he would thus learn that religion had never been a destabilizing factor in the life of the country.

23. Mr. DA SILVA (Observer for Portugal) noted that the statement made the previous day by the observer for Indonesia contained certain inconsistencies. At the time of the Dili massacre, the military authorities were said to have been guilty only of "insubordination", whereas the Indonesian authorities themselves admitted that "about 50 persons had been killed" a figure which had to be doubled according to other sources. Moreover, the Indonesian Commission of Inquiry had itself contradicted the official version that the Timorese had been the brains behind the violence, since it had referred to the overreaction and unbridled response of the security forces which had caused deaths and injuries - a finding which amounted, as the International Commission of Jurists noted, to a good description of murder in some form or another. It might then be asked why none of the military personnel implicated in the events had been tried for murder.

24. In the Commission on Human Rights Indonesia had agreed to apply the Commission's recommendations, which included the repeal of the Anti-subversion Act. However, a number of Timorese had been tried under that Act, and Indonesia had thereby violated article 19 of the Universal Declaration of Human Rights, since the accused had been prosecuted for having professed opinions and for having sought to express them, as well as article 20, since it had prosecuted persons who had tried to organize a peaceful demonstration. Furthermore, contrary to what the Commission on Human Rights had agreed by consensus, human rights organizations such as Amnesty International were not authorized to visit the territory. Finally, according to Amnesty International's latest report, nothing had been done at the political and military level to prevent further violations of human rights, and unless the international community acted most energetically to ensure that human rights were genuinely guaranteed, all those who engaged in peaceful activities to protect them would be in danger of arbitrary detention, torture, "disappearance", or murder.

25. Mr. WIRAJUDA (Observer for Indonesia), speaking in exercise of the right of reply, said he was astonished by Portugal's eagerness to present itself as the protector of East Timor, since that territory's former colonizer had left it in a sorry state in 1975. Portugal, by insisting on using the term "massacre" to describe the Dili events, was departing from the consensus that had made it possible to produce the statement of the Chairman of the Commission on Human Rights. The Indonesian Government had officially expressed its regret concerning the Dili incident and had taken the necessary steps to ensure that it could not happen again. Those responsible had been prosecuted and tried in what had been described by qualified international observers as a fair way in conformity with the provisions of the Code of Criminal Procedure. Furthermore, it was not within the Sub-Commission's mandate to inquire into the validity of the positive law applicable in connection with the protection of State security and public order, and as long as respect for territorial integrity and political unity remained a principle proclaimed by the United Nations Charter, States would be entitled to protect that integrity and unity. East Timor was open to visitors, as was obvious, for example, by the presence of representatives of the International Commission of Jurists at the trials which had followed the Dili events. Finally, the debate on self-determination, which was sterile in the Sub-Commission, should take place between Indonesia, Portugal and the Secretary-General of the United Nations. On the whole the talks had been constructive and ought to be resumed, on condition, however, that they were resumed on the same basis as at the beginning.

26. The CHAIRMAN announced that the general debate on item 6 had been concluded.

THE ADMINISTRATION OF JUSTICE AND THE HUMAN RIGHTS OF DETAINEES

(a) QUESTION OF THE HUMAN RIGHTS OF PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT

(b) QUESTION OF HUMAN RIGHTS AND STATES OF EMERGENCY

(c) INDIVIDUALIZATION OF PROSECUTION AND PENALTIES AND REPERCUSSIONS OF VIOLATIONS OF HUMAN RIGHTS ON FAMILIES

(d) THE RIGHT TO A FAIR TRIAL

(agenda item 10) (E/CN.4/Sub.2/1992/17-19; E/CN.4/Sub.2/1992/20 and Add.1; E/CN.4/Sub.2/1992/21-23; E/CN.4/Sub.2/1992/24 and Add.1-3; E/CN.4/Sub.2/1992/NGO/11-13; E/CN.4/Sub.2/1991/7; E/CN.4/Sub.2/1991/23; E/CN.4/Sub.2/1991/26; E/CN.4/Sub.2/1991/28/Rev.1; E/CN.4/Sub.2/1991/29; E/CN.4/Sub.2/1991/56; E/CN.4/1992/13-14; A/46/703 and Corr.1; A/C.5/46/4)

INDEPENDENCE AND IMPARTIALITY OF THE JUDICIARY, JURORS AND ASSESSORS AND THE INDEPENDENCE OF LAWYERS (agenda item 11) (E/CN.4/Sub.2/1992/25 and Add.1; E/CN.4/Sub.2/1992/NGO/11; E/CN.4/Sub.2/1991/30 and Add.1-4)

27. Mr. CISSE (Centre for Human Rights) introduced agenda items 10 and 11. With regard to item 10, he pointed out that the Sub-Commission had been considering the question of the administration of justice and the human rights

of detainees for many years. A number of standards, a list of which was given in document E/CN.4/Sub.2/1991/26, had already been formulated and applied. Moreover, in its resolution 1992/31 the Commission on Human Rights had again drawn the attention of its special rapporteurs and working groups to the unacknowledged detention of persons, inviting them to provide, wherever appropriate, specific recommendations in that regard. In the same resolution it had requested the Sub-Commission to continue its practice of creating a sessional working group on detention to formulate concrete proposals regarding human rights in the administration of justice. It had also requested the Sub-Commission to formulate concrete proposals to the Secretary-General regarding the practical utility and format of the reports which he submitted pursuant to Sub-Commission resolution 7 (XXVII). The proposals made by the Working Group on detention would be found in its report to the Sub-Commission (E/CN.4/Sub.2/1992/22).

28. The Sub-Commission's special rapporteurs had undertaken several important studies in that field, including the studies on the protection of staff members of the United Nations system and on the application of international standards concerning the human rights of detained juveniles. The Sub-Commission had before it the final report by Mrs. Bautista on the protection of staff members (E/CN.4/Sub.2/1992/19) and document E/CN.4/Sub.2/1992/20 on detained juveniles. The special rapporteurs, Mr. Chernichenko and Mr. Treat, had prepared a report on one of the key elements guaranteeing the rule of law - the right to a fair trial - in which they analysed the developing "content" of that right (E/CN.4/Sub.2/1992/24 and Add.1-3).

29. With regard to the question of human rights and states of emergency, the Sub-Commission had, in its resolution 1991/18, invited the Special Rapporteur, Mr. Despouy, to continue his work and to submit to it, at its 1992 session, his annual report and the list of countries which proclaimed or terminated a state of emergency, updated on the basis of the information received. The Special Rapporteur was also to continue and complete his work on the draft guidelines for the development of legislation on states of emergency and, in particular, to examine the question of non-derogable rights. The Special Rapporteur had completed that work, which he was presenting in document E/CN.4/Sub.2/1992/23. The Sub-Commission's attention was also drawn to Sub-Commission resolution 1991/15 and to Commission on Human Rights resolution 1992/35 entitled "Habeas corpus". In addition, the Secretariat had drawn up a working paper on the issue of the privatization of prisons (E/CN.4/Sub.2/1992/21).

30. Turning to agenda item 11, he recalled that in 1980 Mr. Singhvi had been entrusted with the preparation of a report on the independence and impartiality of the judiciary, jurors and assessors and the independence of lawyers. In his final report the Special Rapporteur had drawn the Sub-Commission's attention to the draft declaration on the independence of justice (E/CN.4/Sub.2/1985/18/Add.5/Rev.1).

31. At its forty-first session the Sub-Commission had invited its Special Rapporteur, Mr. Joinet, to prepare a working paper on means in the area of monitoring by which it could assist in ensuring respect for the independence of the judiciary and the protection of practising lawyers.

At its forty-second session, in accordance with the request made by the Commission on Human Right in its resolution 1989/32, the Sub-Commission had considered the paper submitted by Mr. Joinet. At its forty-third session it had decided to entrust Mr. Joinet with the preparation of a report in which he would bring to its attention practices and measures which had served to strengthen or to weaken the independence of the judiciary and legal protection with reference to United Nations standards. For the consideration of agenda item 11, the Sub-Commission had before it the report of the Special Rapporteur (E/CN.4/Sub.2/1992/25).

32. Mr. GUISSE, Chairman of the Working Group on Detention, said that the Working Group on Detention had met on 5 and 6 August 1992 to consider the following topics: habeas corpus as a non-derogable right; the death penalty; juvenile justice; the privatization of prisons; and model legislation.

33. The members of the Working Group were unanimous in recognizing that the habeas corpus procedure, which could also bear another name, constituted a fundamental guarantee for detainees. In that connection it should be pointed out that in their third report (E/CN.4/Sub.2/1992/24/Add.3), Mr. Treat and Mr. Chernichenko analysed the sources of international norms relating to amparo and habeas corpus. The Working Group had considered that those procedures should apply not only to persons deprived of their liberty but also of persons arbitrarily detained when their conditions of detention deteriorated. NGOs, and particularly the American Association of Jurists and Amnesty International, to mention only two, had made a constructive contribution to the discussions on the subject. The Working Group had considered that the Sub-Commission should continue the study on habeas corpus and amparo and envisage specific recommendations for their application.

34. The death penalty was sometimes used as a means of political repression. In some cases it was also applied to persons of under 18 and members would certainly recall the case of the adolescent who had been executed in South Africa on his sixteenth birthday. In that connection it would be well if the Working Group gave further consideration to alternative penalties. It had also been proposed that the Sub-Commission should make a study of the practice of abolitionist countries when presented with an application for extradition for acts which might attract the death penalty in the requesting country. The Working Group had entrusted two of its members, Mr. Guissé and Mr. Joinet, with the task of drawing up a list of countries which practised the death penalty, of countries which had abolished it under all circumstances, of countries which had abolished it only for crimes committed in normal times, excluding crimes committed during a state of emergency or in time of war, and of countries which had abolished the death penalty de facto by not carrying out the sentences handed down.

35. As for juvenile justice, the Working Group drew the Sub-Commission's attention to a number of fundamental points, such as the minimum age of legal responsibility, the duration of pre-trial detention, minimum recourse to placement in an institution, treatment by institutions and separation of juvenile detainees from adult criminals in prison. The Defence for Children International non-governmental organization had made a constructive contribution to the Working Group's proceedings by developing ideas which could help to improve the situation of juvenile detainees.

36. With respect to the privatization of prisons, very few Governments and NGOs had replied to the letters sent them and it had consequently not been possible to draw up a report on the subject. Consideration of the issue should therefore be postponed until the next session, unless the Sub-Commission decided otherwise. With regard to model legislation, the Working Group had given up the idea of formulating model legislation on detention and suggested that the Sub-Commission should simply delete that item from its agenda.

37. The Working Group had also stressed the need to strengthen coordination between the activities of the Sub-Commission and the Commission on Human Rights, and those of the new Commission on Crime Prevention and Criminal Justice; in that connection it had decided to transmit to the Sub-Commission, for communication to the Commission on Human Rights and the Commission on Crime Prevention and Criminal Justice, a memorandum drafted in cooperation with the secretariats of the two Commissions and in consultation with their respective Chairmen.

38. The CHAIRMAN invited Mr. Despouy to introduce his fifth annual report on states of emergency (E/CN.4/Sub.2/1992/23).

39. Mr. DESPOUY began by recalling the terms of his mandate - namely, to draw up and update the list of countries which proclaimed or terminated states of emergency; to examine, in annual reports, questions of compliance by States with internal and international rules guaranteeing the legality of the introduction of a state of emergency; to study the impact of emergency measures on human rights; and to recommend concrete measures with a view to guaranteeing respect for human rights in situations of state of siege or emergency.

40. He then recalled some of the conclusions he had reached in his previous report: the rights most affected by states of emergency were the right to life, especially in cases of armed conflict, and the right to freedom of movement; particularly vulnerable groups, especially refugees, were the ones most affected; and a state of emergency was often accompanied by the detention of members of Parliament and the dissolution of Parliament, which was precisely the body responsible for upholding the law.

41. Since 1 January 1985, according to information made available to the Special Rapporteur, 80 States had proclaimed, extended, maintained or terminated a state of emergency in one form or another. In that connection, although most of the new republics that had emerged from the former Soviet Union had provided useful information on the emergency measures they had taken, that had not been the case with the republics that had emerged out of the former Yugoslavia. In general, countries from which he requested more detailed information replied promptly and accurately, recent examples being the Russian Federation, the United States of America, Armenia, Moldova, Colombia and Thailand.

42. The geographical diversity, scope and extent of states of emergency was striking. Even countries with democratic traditions such as Canada, the United States of America and Venezuela had been led to take emergency measures in order to cope with a crisis. Most of the republics comprising the former

Soviet Union were under emergency regimes and did not yet have a body of domestic legislation adopted to the international norms governing the legality of states of emergency. They should make use of the advisory services provided by the United Nations in order to review their legislation in that field and to strengthen the protection of human rights in periods of emergency - a subject which might perhaps be considered by the World Conference on Human Rights.

43. He thanked the Government of the Former Soviet Union for its coope.tion following the abortive coup d'état of August 1991, since it had provided him with information on Soviet legislation regarding states of emergency. He also thanked the Government of Peru for having promptly informed him of the measures taken after the partial suspension of the constitution on 5 April 1992 and of their possible human rights implications. He likewise thanked the Government of the Republic of Korea for having pointed out to him that, contrary to what had been stated in its previous report (E/CN.4/Sub.2/1991/28/Rev.1, para. 12), the Government of that country had never proclaimed a state of emergency during the period beginning 1 January 1985.

44. He had sought the cooperation of the African Commission on Human and Peoples' Rights in order to obtain information on states of emergency in Africa and on its activities relating to the protection of human rights in periods of emergency. He intended to continue his efforts to establish, with the assistance of experts and competent university staff, a database which should provide the Sub-Commission with an objective and impartial view of the question of states of emergency. In conclusion, he drew the Sub-Commission's attention to annex I of his report, which reproduced excerpts from a document of the Conference on Security and Cooperation in Europe concerning the rules to be respected by member States when they resorted to a state of emergency. A number of the ideas expressed in that document had already been put forward in the Sub-Commission, and provided an excellent illustration of the contribution the Sub-Commission could make to the protection of human rights.

45. Mr. GUISSE, introducing the question of promotion and protection of human rights through the campaign against impunity, read out long extracts from document E/CN.4/Sub.2/1992/18, in which Mr. Joinet and he himself analysed the causes of the impunity increasingly enjoyed by the perpetrators of serious human rights violations, as well as the means used to combat the practice. In conclusion he noted that impunity was a serious and universal problem which arose in developed and developing countries alike, and that resolute collaboration between States, international organizations and NGOs would be needed if it was to be overcome.

46. Mrs. Ksentini took the Chair.

47. Mr. JOINET (Special Rapporteur), introducing his report on the independence of the judiciary and the protection of practising lawyers (E/CN.4/Sub.2/1992/25 and Add.1), stated that he was only partly satisfied with it because it went only half-way in meeting expectations, even though he himself had managed to overcome a number of difficulties he had encountered in his work.

48. A recurring theme in his report and one that cropped up repeatedly in the reports prepared by special rapporteurs, whether they were reports on specific subjects or country reports, was that the greater the independence of lawyers and judges, the fewer and less serious were human rights violations. In that connection he referred to the work done by Mr. Chernichenko and Mr. Treat on habeas corpus (E/CN.4/Sub.2/1992/24/Add.3).

49. He had adopted a twofold approach - the first being directed at the normative aspect of the question. In so doing he had realized the importance of coordination with the Commission on Crime Prevention and Criminal Justice in Vienna, in so far as it had formulated all the norms established in that field. It was those norms he had used as a yardstick in evaluating various situations. He had then considered the advisability of setting up specific machinery to protect the independence of the judiciary. The Commission on Human Rights would settle the matter and decide, if appropriate, what form that machinery might take. For example, a special rapporteur could be appointed or a working group established. Whatever the decision adopted, he had used as his point of departure the principle that no useful progress could be made in that field without the cooperation of Governments.

50. His report consisted of two parts, one devoted to the progress made by certain countries and the other highlighting possible violations and cases of regression. He had sought the cooperation of Governments, transmitting to them the allegations referred to him so that they could submit their observations. The Governments had indicated their satisfaction at having been thus consulted. If it was decided to establish protective machinery it should be based on a system of classification, since violations of the independence of the judiciary were not all equally serious. The status of judges in states of exception would have to be analysed and particular attention paid to courts of special jurisdiction and military courts, to violations of statutory rights - such as irremovability - and to professional associations of judges. In the case of the latter it would have to be determined whether they should be allowed full freedom of expression or whether, on the contrary, they should be under an obligation to exercise circumspection, without overlooking the fact that such an obligation could serve as a pretext to prevent judges from complaining about possible violations of their independence.

51. Admittedly, his approach was open to certain criticisms - that of selectivity, for example - but he was dealing only with questions he had specifically been asked to tackle. He also noted that NGOs and professional bodies of judges and lawyers were not sufficiently aware of the work being done by the Sub-Commission. They worked closely with the Commission on Crime Prevention and Criminal Justice in Vienna, but rarely took part in the Sub-Commission's work, although they enjoyed consultative status. Under the arrangements for cooperation between the Commission on Crime Prevention and Criminal Justice in Vienna and the Sub-Commission, all matters concerning the teaching of norms should be the responsibility of the former. On the other hand, the study of specific situations should be the responsibility of the new protective machinery, should it be established.

52. Lastly, he explained that his recommendations and conclusions had been set out in an addendum to his report in order to facilitate the procedure because as the Commission could not amend but only take note of a report, it could transform an addendum into a draft decision; it could therefore, if it so desired, make a recommendation along those lines to the Commission.

53. Mr. Alfonso Martínez resumed the Chair.

54. Mr. NEUDECK (Commission on Crime Prevention and Criminal Justice) informed the Sub-Commission that the Committee on Crime Prevention and Control had been replaced by the new Commission, which consisted of 40 member States. The Commission's work consisted essentially of operational activities, advisory services and technical assistance, and it worked closely with the Centre for Human Rights. Training courses had been organized under that cooperative arrangement: one for police officers in Malta in December 1991, and another for senior officials from English-speaking African countries at San Remo. A project to assist Romania in the field of criminal law was being prepared.

55. In the years to come the Commission would endeavour to improve the crime prevention and criminal law norms mentioned by Mr. Joinet. In that connection, the question of the preparation of norms would be included in the agenda of the Commission at each of its sessions. The ninth quinquennial United Nations Congress on the Prevention of Crime and the Treatment of Offenders would be held in 1995, at a venue yet to be determined. The Congress would provide Governments with an opportunity to exchange information and experience and, by way of exception, it would not be concerned exclusively with the preparation of norms. Moreover, the new Commission would now constitute the real decision-making organ, and all resolutions before the Congress would be submitted through it.

56. The World Conference on Human Rights, to be held at Vienna in 1993, as well as the meeting of the Preparatory Committee presided by Mrs. Warzazi, a member of the Sub-Commission, that would take place in September were welcome developments. He stressed the importance of close cooperation between the Vienna Commission and the Sub-Commission and thanked the latter for the action it had taken to improve it. He welcomed the report of the inter-sessional Working Group on the Methods of Work of the Sub-Commission chaired by Mr. Joinet (E/CN.4/Sub.2/1992/3) in which it was proposed, in particular, that the chairmen of the Sub-Commission, the Committee for the Elimination of Racial Discrimination, the Human Rights Committee and the Commission on Crime Prevention and Criminal Justice should participate in a post-sessional meeting of the Bureau of the Commission on Human Rights. It was also proposed in the report that the Chairman of the inter-sessional Working Group should communicate to the Sub-Commission, for subsequent transmission to the Commission on Crime Prevention and Criminal Justice, a memorandum drawn up jointly with the secretariats of the two Commissions and in consultation with their respective chairmen; the memorandum would deal with questions of common interest and include a comparative analysis of agendas and, if appropriate, proposals for improving the allocation of work.

The meeting rose at 1 p.m.